

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 9, 2021 at 11:00 a.m.

1.	<u>14-24616-E-13</u> <u>21-2012</u>	NICOLE GOLDEN/ STEPHEN ALTER GOLDEN ET AL V. UNITED STATES OF AMERICA (INTERNAL REVENUE)	PRE-TRIAL CONFERENCE RE: COMPLAINT FOR DETERMINING DISCHARGEABILITY AND AVOIDING LIEN 2-8-21 [1]2-8-21 [1]
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Final Ruling: No appearance at the December 9, 2021 Pretrial Conference is required.

Plaintiff's Atty: John G. Downing
Defendant's Atty: Ty Halasz

Adv. Filed: 2/8/21
Answer: 3/15/21

Nature of Action:
Validity, priority or extent of lien or other interests in property
Dischargeability - other
Declaratory judgment

Notes:
Scheduling order -
Initial disclosure by 5/28/21
Close of discovery 9/24/21
Dispositive motions heard by ~~10/29/21~~; changed to 12/3/21 by court order filed 11/4/21 [Dckt 16]

The Pretrial Conference is continued to 11:00 a.m. on January 20, 2022, to be set for a further date as determined appropriate by the orders on the cross motions for summary judgment set for that same date and time

On December 3, 2021, Plaintiffs Nicole Golden and Stephen Alter and Defendant United States of America (Internal Revenue Service) filed cross motions for summary judgment. Dckts. 28-33, 17-26, respectively. The hearing date on these motion is January 20, 2022.

Such motions having been filed, the Pretrial Conference is continued to 11:00 a.m. on January 20, 2022, to be set for a further date as determined appropriate by the orders on the cross motions for summary judgment.

2. [19-26574-E-7](#) **SEAN ALMEIDA** **MOTION FOR JUDGMENT ON THE**
[21-2041](#) **DNL-3** **PLEADINGS**
11-10-21 [43]

**HOPPER V. NAVY FEDERAL CREDIT
UNION ET AL**

**THE COURT SHALL HEAR THIS MOTION ON THE 10:30 A.M. CALENDAR
ON DECEMBER 9, 2021, TO BE CONDUCTED IN CONJUNCTION WITH
THE MOTION TO SELL THE REAL PROPERTY THAT IS
THE SUBJECT OF THE ASSERTED JUDGMENT LIEN**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, Defendant, and Defendant's Attorney on November 10, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Judgment on the Pleadings has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion for Judgment on the Pleadings is granted.</p>
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PLAINTIFF-TRUSTEE'S COMPLAINT

The Plaintiff Chapter 7 Trustee, J. Michael Hopper, ("Plaintiff-Trustee") filed the instant case on June 7, 2021, against Navy Federal Credit Union et al. ("Defendants").

Plaintiff-Trustee seeks claims for Determining the Validity, Priority, and Extent of Defendants' Liens Against the Debtor's Assets. Dckt. 1. Plaintiff-Trustee contends that claims secured

by abstracts of judgment against 22 Solano Drive, Dixon, California (“Subject Property”) are limited to amounts incurred through date of separation of Debtor, Sean Almeida, and his ex-spouse, Becky Almeida, as Ms. Almeida incurred the debts, not Mr. Almeida. Mr. and Ms. Almeida were married on June 6, 2009, and separated on March 16, 2016. The marital status of Mr. and Ms. Almeida was dissolved by Solano County Superior Court on November 5, 2018.

Defendant Navy Federal Credit Union (“NFCU”) is the only claim remaining unresolved. In Plaintiff-Trustee’s Complaint, they assert the amounts incurred by Ms. Almeida prior to separation was \$8,086.00. However, Defendant NFCU has an underlying judgment against Ms. Almeida in the amount of \$41,854.05, which is secured by an abstract of judgment on the Subject Property.

DEFENDANT NFCU’S ANSWER

On July 12, 2021, Defendant NFCU filed an answer to Plaintiff-Trustee’s Complaint. Dckt. 7. Defendant NFCU has a blanket denial of the allegations in paragraphs 11, 17, and 21. Additionally, Defendant NFCU makes a blanket statement that they have no information or belief that the allegations in paragraphs 1, 10, and 12-15 are true, and as such denies these allegations as well.

PLAINTIFF-TRUSTEE’S MOTION FOR JUDGMENT ON THE PLEADINGS

On November 10, 2021, Plaintiff filed the instant Motion for a Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c) against Defendant NFCU. Dckt. 43. Plaintiff-Trustee asserts the debt must be bifurcated and the only portion arising pre-separation may be enforced against the Subject Property.

Plaintiff-Trustee asserts Defendant NFCU’s denial of allegations is based on *pro forma* denials where the matter is one of common knowledge. This is improper based on long standing precedent.

Plaintiff-Trustee states the key fact of when Mr. and Ms. Almeida separated is not in real dispute and California law holds the community estate is liable for debt incurred before or during marriage.

NFCU’S OPPOSITION

On November 26, 2021, Defendant NFCU filed a “Memorandum of Points and Authorities in Opposition to Motion for Judgment on the Pleadings.” Dckt. 49. Defendant NFCU contests that, although they acknowledge the marriage ended with the date of separation of March 16, 2016, California law provides the lien attaches in full to the Subject Property. Defendant NFCU states their lien should be enforced against the Subject Property and Mr. Almeida or Plaintiff-Trustee can seek reimbursement from the spouse through state court family law action.

PLAINTIFF-TRUSTEE’S REPLY

On December 1, 2021, Plaintiff-Trustee filed a reply to Defendant NFCU’s opposition. Dckt. 53. Plaintiff-Trustee states Defendant NFCU has not disputed any key facts. As such, the sole issue is a matter of law: whether Defendant NFCU is entitled to enforce the post-separation portion of its Abstract against the property as community property even though \$31,063.79 of the \$41,854.05 principal accrued

post-separation. Plaintiff-Trustee states Defendant NFCU has provided no authority to support the proposition that it is entitled to satisfy the entire balance against the Subject Property.

APPLICABLE LAW

Federal Rule of Civil Procedure 12(c) Standard

On a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), the allegations of the non-moving party must be accepted as true, while the allegations of the moving party, which have been denied, are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1548 (9th Cir. 1989). Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Id.* Dismissal is proper only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim that would entitle him to relief. *New.Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1090, 1115 (C.D. Cal. 2004). While the court must construe the complaint and resolve all doubts in the light most favorable to the plaintiff, the court does not need to accept as true conclusory allegations or legal characterizations. *Id.* (citing *General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989); *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988)).

A motion for judgment on the pleadings based on Federal Rule of Civil Procedure 12(c) is a functional equivalent of a motion to dismiss under Federal Rule of Civil Procedure 12(b), requiring the same underlying analysis. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Thus, for a complaint to withstand a Rule 12(c) motion for judgment on the pleadings, it must contain more detail than “bare assertions” that are “nothing more than a formulaic recitation of the elements” required for the claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Courts must draw upon their “experience and common sense” when evaluating the specific context of the complaint and whether it contains the necessary detail to state a plausible claim for relief. *Id.* at 679. The factual content on the face of the complaint—not conclusory statements in the pleading—and reasonable inferences drawn from those facts must plausibly suggest that the plaintiff could be entitled to relief for the pleading to survive a Rule 12(c) motion. *See id.* at 677.

In the instant case, no material facts are in dispute. As such, the motion will be decided as a matter of law.

DISCUSSION

The Property Constituting the Bankruptcy Estate

Pursuant to 11 U.S.C. § 541(a)(1)(2), all community property interests of the debtor and their spouse become part of the bankruptcy estate so long as the property is:

- (A) under the sole, equal, or joint management and control of the debtor; or
- (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor’s spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a)(2); 5 Collier on Bankruptcy P 541.11 (16th 2021). As such, if community property is subject to “joint” or “equal” management and control by the spouses, a bankruptcy petition of one spouse passes all such community property to the bankruptcy estate. *Id.* The only property not included in the bankruptcy estate is the separate property of the nondebtor spouse and community property under the sole management and control of the nondebtor spouse, to the extent such community property is not liable for claims against the debtor. *In re Martell*, 349 B.R. 233 (Bankr. D. Ida. 2005); *Ragan v. Commissioner*, 135 F.3d 329 (5th Cir. 1998); 5 Collier on Bankruptcy P 541.11 (16th 2021).

In Mr. Almeida’s Schedules A/B from their Chapter 7, he indicates he own one-half interest in fee simple in the subject property commonly known as 22 Solano Dr, Dixon, California. Case No. 19-26574, Dckt. 1. Additionally, pursuant to the Complaint, the deed granting the real property recorded on October 22, 2010 is to “Sean Almeida and Becky Almeida, husband and wife as community property with right of survivorship. Dckt. 1 at ¶ 9. Also, according to Plaintiff-Trustee’s Motion to Sell the Subject Property in the underlying Chapter 7 case, although a judgment dissolution was entered on February 7, 2019, property division issues has not yet been decided and the state court reserved jurisdiction over these issues. Case No. 19-26574, Dckt. 78.

Since the property has not yet been divided, the Subject Property, which is community property, is in the Bankruptcy Estate.

California Family Code Favors Only Pre-Separation Enforcement

Pursuant to California Code of Civil Procedure § 695.020(a), community property is subject to enforcement of a money judgment as provided in the Family Code.

California Family Code § 910 provides that the community estate is liable for debt incurred by either spouse **before or during marriage** (emphasis added), regardless of which spouse had management or control. The term “during marriage” does not include the period after the date of separation and before a judgment of dissolution or legal separation. California Family Code § 910(b); 11 Witkin Sum. Cal. Law Com Prop § 182 (2021). The date of separation is the date that a complete and final break in the marital relationship has occurred. California Family Code § 70.

Here, there is no dispute that Mr. and Ms. Almeida’s marriage ended with a separation on the date March 16, 2016. As such, the community estate remains liable for the debt incurred only before the date of separation on March 16, 2016. According to Plaintiff-Trustee’s Complaint, the portion incurred by Ms. Almeida prior to separation was \$8,086.49. Complaint at 3, Dckt. 1. However, according to Plaintiff-Trustee’s Motion for Judgment on the Pleadings, “[Ms. Almeida] accrued an additional \$31,063.79 in principal and interest to the balance on the Line of Credit [post-separation], bringing the total \$41,854.05.” Motion at ¶ 15. This would yield a total of \$10,790.26 in pre-separation debt.

In contrast to these amounts, Plaintiff-Trustee’s has filed a Motion to Sell the Subject Property; No. 19-26574, Dckt. 78; and states that the the undisputed amount of debt pre-separation for Defendant NFCU is indicated as \$10,790.26 principal plus \$4,023.44 interest, which yields a total of \$14,813.70. This \$14,813.70 amount appears to be an update calculation. At the hearing,
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Defendant NFCU points to *Lezine v. Security Pacific Financial*, 14 Cal.4th 56 (1996) (“*Lezine*”) in their Memorandum of Points and Authorities in Opposition. Dckt. 49. Defendant NFCU

uses *Lezine* to argue that Mr. Almeida remains liable for satisfaction of existing liens and may seek reimbursement against his spouse to the extent the property is applied in satisfaction of liens. However, Defendant NFCU fails to address that *Lezine* considers “the applicable rules governing the liability of community property for debts incurred **during** the marriage.” *Lezine* at 63 (emphasis added). What is at issue in the present case is the debts Ms. Almeida incurred **after** separation. As such, this case is not proper as precedent.

Defendant NFCU also points to Family Code § 916 to further their argument. However, § 916 applies after the division of community and quasi-community property. Here, division of property has not yet occurred.

The court notes that Plaintiff-Trustee’s Motion to Sell the Subject Property in the underlying chapter 7 case is set to yield net proceeds in the amount of \$126,036.30. This is after the Homestead Exemption of \$100,000.00 will be divided amongst Mr. and Ms. Almeida. It is unclear how Plaintiff-Trustee will divide the net proceeds, but it is possible that significant assets will be distributed to both spouses upon the sale of Subject Property.

As such, pursuant to California Family Code § 910, the judgment lien of Defendant NFCU encumbers the Community Property for only pre-separation amounts of \$14,813.70 (\$10,790.26 principal plus \$4,023.44 in post-judgment interest).

The court grants the Motion for Judgment on the Pleading in favor of Plaintiff-Trustee.

This ruling only determines how the lien has or has not attached to property of the bankruptcy estate. The court makes no ruling on the effect on the lien on any property which may be Debtor’s Ex-Spouse’s separate property.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Judgment on the Pleadings filed by Plaintiff J. Michael Hopper (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the judgment lien of Defendant Navy Federal Credit Union (“NFCU”) encumbers the real property commonly known as against 22 Solano Drive, Dixon, California (the “Property”) in the amount of \$14,813.70 (\$10,790.26 principal balance plus \$4,023.44 in post-judgment interest).

IT IS FURTHER ORDERED that Navy Federal Credit Union’s lien, to the extent it attaches to any separate property of Debtor’s Ex-Spouse, Becky Almeida, to the net sales proceeds to the same extent, validity, priority and amount, as it existed in Becky Almeida’s separate property interest in the Property to be sold.